HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL NO. 67 OF 2006

Between:

Laxminivas Agarwal

……Appellant/Petitioner

And

The Commissioner of Police,

Basheerbagh, Hyderabad and others.

……Respondents/Respondents

:: JUDGMENT ::

Counsel for the Petitioner : Party-in-Person

Counsel for Respondent Nos. 1 to3 : Government Pleader for Home

Counsel for Respondent No.4 : Mr.C. Praveen Kumar

Dated: 25-01-2006

Writ Appeal No.67 of 2006

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 2.11.2005 vide which the learned Single Judge dismissed the Writ Petition filed by the appellant for issuance of a direction to respondent No.1 to close the First Information Reports (FIRs) got registered against him by respondent No.4.

In the Writ Petition filed by him the appellant claimed that he is a businessman belonging to well reputed family. He is said to have come in contact with respondent No.4 Smt. Lata Jain wife of Sri B. Kasinath through Dr. R.M. Saboo and Sandesh Saboo for a marital alliance with Ms. Hema Jain (sister of respondent No.4). According to him, the marital alliance did not fructify, but respondent No.4 regularly

maintained contact with him, took loan of Rs.50,000/- and then made a proposal for sale of flat No.404 situated on 4th floor of Venkata Krupa Apartments, Domalguda, Hyderabad. He is said to have given post-dated cheques to respondent No.4 but transaction regarding the sale of the flat did not materialize. He alleged that with a view to bring pressure on him, respondent No.4 filed a series of complaints under various provisions of the Indian Penal Code and got him arrested in flagrant disregard of the law laid down by the Supreme Court in **D.K. Basu vs. State of West Bengal** case. He further averred that respondent No.4 has considerable influence over higher police authorities and she is in regular touch with Sri C.V. Anand, Deputy Commissioner, Central Zone and through him she has been able to manipulate the investigating officers for harassing him. He prayed that the proceedings initiated on the basis of complaints filed by respondent No.4 which were registered as different FIRs at Central Zone, Narayanaguda and Abids Police Stations as also the private complaints filed by her should be quashed because the allegations contained therein are totally false and mischievous.

In the counter-affidavit filed on behalf of respondents 1 to 3 by Shri M. Gurappa, Sub-Inspector of Police, Narayanaguda P.S., the deponent expressed his ignorance about the appellant's relationship with respondent and the proposed marital alliance between the appellant and the sister of respondent No.4. He denied the allegation of harassment by the police and averred that cases were registered against the appellant on the basis of the first information reports lodged by respondent No.4. According to Shri M. Gurappa, on receipt of complaint on 22.4.2003 made by respondent No.4 that the petitioner trespassed into her office and threatened her, Crime No.228 of 2003 was registered under sections 448, 506 and 509 I.P.C. The appellant was arrested on 25.4.2003 and was remanded to judicial custody on the next date. After completion of investigation, the charge sheet was filed on 25.9.2003 and the case is pending trial. Similar complaint was made by respondent No.4 on 30.5.2003 at Police Station, Chikkadapally leading to the registration of a crime under sections 448, 506 and 509 I.P.C. The appellant was arrested on 19.6.2003 and remanded to judicial custody. In that case also investigation has been completed and a charge sheet has been filed. In relation to another complaint dated 30.7.2003 made by respondent No.4, Crime No.270 of 2003 was registered at Police Station, Abids under section 354 I.P.C. The appellant was arrested and remanded to judicial custody. Thereafter he was released on bail. Respondent No.4

filed a private complaint in the Court of 9th Munsif Magistrate, Hyderabad alleging harassment, which was referred to the police for investigation. Thereafter, Narayanaguda Police Station registered it as Crime No.704/2003 under sections 193, 211, 380, 384, 501 and 506 I.P.C. After completion of investigation, the case was referred as undetected. On his part, the appellant filed complaint before Afjalgunj P.S. making allegations against respondent No.4. Thereupon, a case was registered under sections 425, 420 read with 120(B) I.P.C. and the same is under investigation.

In her counter-affidavit, respondent No.4 denied the allegation that she is harassing the appellant. She denied the allegation of having received a cheque of Rs.50,000/- from the appellant or of having offered the flat to him. She averred that the appellant trespassed into her office and threatened her from time to time necessitating filing of first information reports. She further averred that the appellant had contacted her family through social workers for marital alliance, but as the talks for marital alliance failed, no further contact was kept with him. In paragrah 7 of her affidavit, respondent No.4 alleged that the appellant wanted to marry her and, for this purpose, he exerted pressure upon her to seek divorce from her husband and having failed in his effort, he held out threats of dire consequences.

The appellant filed detailed rejoinder reiterating his allegation that the complaints filed against him are false and motivated and that a deliberate attempts has been made to harass him.

The learned Single Judge, after taking cognizance of the averments contained in the petition, the counter-affidavits filed by the respondents and the fact that investigation in some of the cases has been completed and charge sheets have been filed, declined to entertain appellant's prayer for closure of the cases. The last two paragraphs of the order passed by the learned single Judge read as under:

> "In the light of the averments in the counter-affidavit filed by the respondents and having regard to the undisputed fact that the investigation in the crimes registered against the petitioner have already been completed and the matters are pending trial before the competent court, I am of the view that the interference of this Court under Article 226 of the Constitution of India is not at all warranted at this stage.

> In the absence of any supporting material, the alleged connivance of the fourth respondent with the police officials cannot be taken as a ground to issue a writ of mandamus compelling the respondents to close the crimes registered against the petitioner. That apart, since, as noted above, the charge-sheets have already been filed before the Competent Court, the relief sought itself is superfluous and the writ petition is devoid of merit."

The appellant who appeared in person vehemently argued that he has been subjected to physical and mental harassment by the police at the instance of respondent No.4 and the learned Single Judge committed grave error by refusing to entertain his prayer for closing the FIRs. He emphasized that the manner in which the police authorities have conducted investigation shows their bias against him and that he would not get fair opportunity to defend himself. He relied on the judgments of the Supreme Court in **D.K. Basu vs. State of West Bengal (supra)** and **D.K. Basu vs. State of West Bengal, Khedu Mohton and others v. State of Bihar, Chandu vs. State of Mharashtra, S.N. Dube vs. N.B. Bhoir, Chandrapal Singh vs. Maharaj Singh** and also the judgment of this Court in **Ch. Siddaiah and another vs. State of Andhra Pradesh and others** and argued that the order of the learned Single Judge is liable to be set aside.

The learned Government Pleader supported the order of the learned Single Judge and argued that there is no valid ground for closing the FIRs lodged against the appellant. He submitted that the appellant's case does not fall in any of the exceptions carved out in **State of Haryaana v. Bhajanlal** and, therefore, the Court may not stultify the progress of the cases, four of which are pending trial before the competent Court.

We have given serious thought to the argument of the appellant and the learned Government Pleader and perused the record. In **State of Harayana v. Bhajanlal** (Supra), the Supreme Court considered the scope of the High Court's power of judicial review in matters involving challenge to the first information report as also the scope of inherent power of the Court under section 482 of the Code of Criminal Procedure and laid down the following propositions:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety

do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

If the appellant's case is examined in the light of the aforementioned propositions, we do not find any valid ground to differ with the view taken by the learned Single Judge that there was no justification to close the proceedings of the FIRs and complaints filed by respondent No.4. Undisputedly, FIRs and the criminal complaints lodged by respondent No.4 contain allegations of threats and harassment by appellant. In some of the cases, the police have, after conducting investigation, filed charge sheets and the cases are pending trial. Therefore, at this stage, it is impossible to say that the allegations in the FIRs and the complaints lodged by respondent No.4 are baseless or false. Rather, a reading of the averments contained in the pleadings of the writ petition show that the allegations levelled by respondent No.4 did prima facie constitute criminal offences, which required a thorough investigation by the police. Therefore, the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for closing the FIRs.

The judgments relied upon by the appellant do not have any bearing on the cases in hand and, therefore, we do not consider it necessary to deal with them in detail.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

25th January, 2006

G. BHAVANI PRASAD, J

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